

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MITHAQ AL HUMRANI,

Plaintiff,

v.

Case No. 2:05-cv-203
HON. ROBERT HOLMES BELL

RUDOLPH KLEEMAN,

Defendant.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on July 28, 2006. The Report and Recommendation was duly served on the parties. The Court has received objections from both plaintiff and defendant. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Defendant argues that the Magistrate Judge erred in recommending that a genuine issue of fact exists on plaintiff's equal protection claim, because the issue of whether defendant intentionally coughed in plaintiff's food was not exhausted. The issue presented by plaintiff is whether his equal protection rights were violated by defendant due to defendant's behavior in harassing plaintiff based upon plaintiff's race and national origin. A question of fact exists because plaintiff has alleged that defendant's behavior exceeded mere harassing comments and rose to

threatening behavior. Defendant argues that he is entitled to qualified immunity, because clearly established law cannot be based upon prison policy directives which forbid discrimination based upon race and national origin. However, as stated in the Report and Recommendation, *Knop v. Johnson*, 977 F.2d 996 (6th Cir. 1992), stands for the proposition that a pattern of racial slurs may violate the Equal Protection Clause. Whether defendant violated the Equal Protection Clause is a question of fact. Defendant is entitled to dismissal of all other claims set forth in the complaint.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket #17) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendant's motion for summary judgment (docket #10) is GRANTED IN PART AND DENIED IN PART. All of plaintiff's claims, except plaintiff's equal protection claim, are DISMISSED.

Date: August 31, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE